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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Date 19/05/2009

Appeal No. ST/619 /2008 - SM

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. RAIPUR
CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.

Appellant
Vs
Respondent

C.C.E. RAIPUR

M/S SAKET OXYGEN PVT. LTD.

I am directed to transmit herewith a certified copy of **Final order No.** 378 / 2009 SM[BR] dated 24.4.2009 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
M/S SAKET OXYGEN PVT. LTD.
GHATOLI CHOWK, CHAMPA DISTT. JANJGIR CHAMPA (C.G.)
2. Adv. / Consult
NONE:—

3 S.D.R
~~4 J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35. West Punjabi Bagh. New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file

Assistant Registrar
(SM Appeal Branch)

10

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Service Tax Appeal No.ST/619 of 2008-SM (BR)

[Arising out of common Order-in-Appeal No.09(ST)RPR-I/2008 dated 30.04.2008 passed by the Commissioner of Central Excise (Appeals-I), Central Excise, Raipur]

Date of Hearing/ Decision:24.04.09

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

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3. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.

2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :

3. Whether Their Lordships wish to see the fair copy of the Order? :

4. Whether Order is to be circulated to the Departmental authorities? :

CCE, Raipur ....Appellants
[Rep. by Shri S. Gautam, DR]

Vs.

M/s. Saket Oxygen Pvt. Ltd. ...Respondent
[Rep. by None.]

CORAM: **Hon'ble Mr. P.K. Das, Member (Judicial)**

Final Order No. 378/09-SM(BR)/Dated:24.04.2009

Per P.K. Das:

Revenue filed this appeal against the order of the Commissioner (Appeals), whereby Adjudication Order was set aside.

(17)

2. After hearing the ld. DR and on perusal of the records, I find that the issue involved in this case relates to whether the credit availed on inputs and capital goods and input services can be utilised for discharging the liability of Service Tax on GTA services. It is seen that the Commissioner (Appeals) set aside the Adjudication Order following the decision of the Tribunal in the case of CCE, Chandigarh Vs. Nahar Industrial Enterprises Ltd. - 2007 (80) RLT 482 (CESTAT-DELHI). He has also followed the decision of the Tribunal in the case of Prakriti Industries vide Final Order No.1042-1044 /2007-SM (BR) dated 22.06.2007. The relevant portion of the Tribunal's order dated 22.06.2007 is reproduced below:-

> " Sub-Rule 4 of Rule 3 of Cenvat Credit Rules, 2004 relates to utilisation of Cenvat credit. That sub-rule makes it clear that credit can be utilised for payment of excise duty as well as service tax on any output service. Thus payment of service tax is a specifically authorised item in regard to service tax credit. In the present case, the appellant is treated as a service provider when he paid service tax on transport service. Corollary of it is that the transport involved is an output service. Therefore, the finding of the Commissioner that since the appellants are manufacturers of excisable goods they cannot be treated as provider of output service is not sustainable. This Tribunal's decision in the case of Nahar Industrial Enterprises Ltd. also supports the appellant's case."

18

3. In view of the above decisions of the Tribunal, I do not find any reason to interfere the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

Order dictated & pronounced in open court on 24.04.2009.

(P.K. Das)
Member (Judicial)

Ckp.